

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Offic**

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Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/017, 959 02/03/98 BERNHARDT

D 8117-000021

QM22/0604

EXAMINER

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PIERCE, W

ART UNIT PAPER NUMBER

3711

DATE MAILED:

06/04/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/017,959	Applicant(s) Bernhardt	
	Examiner William M. Pierce	Art Unit 3711	
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>			
Period for Reply			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.			
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 			
Status			
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>Feb 28, 2001</u>			
2a) <input checked="" type="checkbox"/> This action is FINAL. 2b) <input type="checkbox"/> This action is non-final.			
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11; 453 O.G. 213.			
Disposition of Claims			
4) <input checked="" type="checkbox"/> Claim(s) <u>17-28</u> is/are pending in the application.			
4a) Of the above, claim(s) _____ is/are withdrawn from consideration.			
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.			
6) <input checked="" type="checkbox"/> Claim(s) <u>17-28</u> is/are rejected.			
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.			
8) <input type="checkbox"/> Claims _____ are subject to restriction and/or election requirement.			
Application Papers			
9) <input type="checkbox"/> The specification is objected to by the Examiner.			
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are objected to by the Examiner.			
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved.			
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.			
Priority under 35 U.S.C. § 119			
13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).			
a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of:			
1. <input type="checkbox"/> Certified copies of the priority documents have been received.			
2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.			
3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).			
*See the attached detailed Office action for a list of the certified copies not received.			
14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).			
 WILLIAM M. PIERCE PRIMARY EXAMINER			
Attachment(s)			
15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)			
16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)			
17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____			
18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____			
19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)			
20) <input type="checkbox"/> Other: _____			

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1. Claims 17-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for the reasons set forth in the previous office action.

The preamble of the claim merely recites the scope of the claim to be an "accessory". Yet the body of the claim positively recites "the bowling ball". Since the body of the claim implies a combination is being claimed and the preamble recites the contrary, the scope of the claim is not clear. The claims must be amended so that the preamble and the body of the claim are in agreement. The facts of *In re Walter L. Larsen* have been considered but don't apply since the construction of the claims in the instant case is different.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 17-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Stevens.

Stevens shows a finger cot having projections that form a concave arcuate surface as shown in fig. 2. Stevens clearly shows "one or more projections" in fig. 1. The subsequent phrase "for contacting a bowling ball" is considered a mere statement of intended use and carries

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little weight to distinguish over the structure shown in the applied art. The limitation “substantially like a curvature of [a] bowling ball” is considered functional and fails to distinguish over the art of record since such is inherently met. Such is shown in fig. 2 As to claims 19 and 24, the radius of the surface shown in fig. 2 is considered to be “complementary” to a radius of a bowling ball. Claims 20, 27 and 28 are considered shown in fig. 3. That the projections have a “desired configuration such that when force is exerted by [a] bowler on [a] ball, the projections flatten...” While it can be argued that one is not certain of the material of the projections in Stevens, it is clear that they are not rigid since they are intended to be used on brushing teeth which would require some degree of softness. It follows that placing force on the projections of any type of brush by an object (such as a bowling ball) would force them to flatten in compressed and/or bent over fashion.

4. This is a CPA of applicant's earlier Application. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication should be directed to William Pierce at E-mail address bill.pierce@USPTO.gov or at telephone number (703) 308-3551.



WILLIAM M. PIERCE
PRIMARY EXAMINER